ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

INITIAL COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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March 4, 1996

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Introduction and Summary

Vanguard Cellular Systems, Inc. ("Vanguard"), a cellular service provider headquartered in Greensboro, North Carolina, with nearly 400,000 subscribers in 26 Rural Service Areas ("RSAs") and Metropolitan Statistical Areas ("MSAs") in seven states, submits these comments in response to the Notice of the Proposed Rulemaking in the above-captioned proceeding (the "Notice"). In the Notice, the Commission proposes that rates for interconnection between Commercial Mobile Radio Services ("CMRS") providers and local exchange carriers ("LECs") be priced on a "bill and keep" basis, and that rates for dedicated transmission facilities provided by LECs to connect LEC and CMRS networks should be based on existing access charges for similar transmission facilities. Vanguard fully supports the Commission's effort to ensure mutual compensation and promote competition among co-carriers. Vanguard urges the Commission to adopt bill and keep and suggests that carriers providing physical transport facilities should collect from co-carriers only the costs associated with the traffic originating from the co-carrier.

As set forth in more detail below, the history of interconnection between cellular carriers and LECs makes clear that CMRS providers will not enjoy the full and

equivalent co-carrier status with LECs that the Commission has accorded them unless and until the FCC mandates the rates, terms and conditions of interconnection, at least on an interim basis. In these comments, Vanguard urges the Commission to level the playing field by:

(i) adopting bill and keep as the interim compensation model for LEC-CMRS call termination;

(ii) allowing the carrier providing physical transport facilities to collect from the co-carrier only those costs associated with traffic originating from the co-carrier;

(iii) requiring LECs to compensate CMRS providers for terminating calls from interexchange carriers ("IXCs") to the same extent they compensate neighboring LECs;

(iv) promulgating specific interconnection rules expressly preempting state regulation of CMRS-LEC interconnection; and

(v) applying these interconnection rules equally to all CMRS providers.

Initial Comments of Vanguard Cellular Systems, Inc.
CC Docket No. 95-185; Filed March 4, 1996

I. GENERAL COMMENTS

A. Introduction

At present, the terms and rates of interconnection between LECs and CMRS providers are set not by regulation, but by unregulated negotiation between the LEC monopolist and the CMRS provider. While cellular carriers usually are able to reach interconnection arrangements with LECs, they typically are without sufficient bargaining power to negotiate fair and reasonable terms and rates for interconnection. Indeed, the Commission's current policy of mutual compensation for termination is almost universally ignored by LECs, including the LECs with which Vanguard interconnects in Maine, New Hampshire, Pennsylvania, South Carolina, West Virginia and Florida. The excessive rates that CMRS providers such as Vanguard must pay for interconnection increase the cost of mobile service to the consumer and raise barriers to entry for new CMRS providers and emerging local loop competitors.

Against this backdrop, the only efficient and reasonable approach to LEC-CMRS interconnection compensation is the immediate implementation of a bill and keep arrangement for all calls terminated between LECs and CMRS providers, i.e. both the CMRS provider and the LEC charge each other a termination rate of zero. By strictly enforcing the principle of mutual and reciprocal compensation, the Commission can swiftly eliminate inequality in this area. Bill and keep is also a fair method of compensation, as the evidence shows that the incremental cost of termination approaches zero; in fact, the expense of measuring, billing, and collecting termination fees would likely outweigh any benefits of

cost-based compensation. Moreover, for the Commission, bill and keep is the least onerous of the proposed solutions; unlike the cost-based approaches, it can be initiated without any further administrative proceedings, and it will not require the Commission's involvement in future disputes over interconnection rates.

The Commission's notice also tentatively proposes that the LECs continue to charge CMRS providers existing rates for the so-called "dedicated transmission facilities" provided by LECs for the physical connection and transport between LEC and CMRS networks. *See Notice* at ¶¶ 63-65. Because these facilities allow traffic to flow in both directions between co-carriers,[1/] -- hence the term *"inter*connection" -- they should be viewed not as "dedicated" but rather as shared. The Commission's proposal ignores this co-carrier status and instead allows LECs to continue to charge CMRS providers the entire cost of these facilities. Any cost-based rates for transport facilities should therefore be allocated according to the direction of traffic, allowing the carrier providing those facilities to recover the cost only for calls originating from the co-carrier.

B. How Interconnection Works

Addressing the issues surrounding the LEC-CMRS relationship requires an understanding of how the two co-carriers interconnect. Interconnection is required when a mobile customer places a call to a landline subscriber (or vice-versa). A call originated by a mobile user is relayed to the cell, and then from the cell to the MTSO (mobile telephone switching office) or hub cell site, either by microwave owned and licensed by the cellular carrier (70%-80% of Vanguard's calls) or by private circuit (20-30%) leased from the LEC.

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1. The Commission has long recognized that the CMRS-to-LEC relationship is a co-carrier relationship. *Cellular Communications Systems,* 86 FCC 2d 469, 496 (1981), *recon.,* 89 FCC 2d 56 (1982).

Interconnection occurs at the MTSO or hub cell site, where the LEC provides physical transport facilities to its system by voice path (a twisted copper or fiber optic line). These facilities include the "DS1" trunk, which contains 24 voice paths or "DS0" circuits. Nearly all of the calls initiated by Vanguard subscribers travel from the MTSO or hub cell site directly to the LEC tandem switch, then to an end office, and then to the LEC's subscriber.[2/]

The LEC bills Vanguard for interconnection in three components: installation of the physical transport facilities (at a per-trunk rate); a monthly charge for those facilities, billed per DS0; and a per minute charge for call termination.

When a Vanguard subscriber originates a long distance call that requires an interexchange carrier ("IXC"), Vanguard often connects directly to the IXC without travelling through the LEC. Incoming calls from the IXC, on the other hand, are currently routed to Vanguard through the LEC. While direct inbound interconnection may be implemented in the near future, incoming calls carried by an IXC are indistinguishable to Vanguard's network from calls originating from the LEC itself.

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2. Cellular carriers interconnect with LECs using two methods -- Type 1 and Type 2 interconnection. LECs charge a higher rate for terminating Type 1 calls, which are typically sent to the LEC's end office. Vanguard limits Type 1 interconnection to 911, directory assistance, and 1-800. For the purposes of these comments, the rates are for Type 2 interconnection, the method used by Vanguard for the overwhelming majority of its interconnected calls.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECS AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. Existing Compensation Arrangements

LEC-CMRS interconnection is governed by Section 201 of the Communications Act, which requires common carriers to interconnect with other carriers, and Section 332, which makes Section 201 applicable to CMRS providers.[3] The Commission's rules implementing these statutes require that LECs negotiate with CMRS providers to reach interconnection compensation arrangements that are "reasonable" and "mutual."[4] But neither the statutory mandate nor the regulatory requirements have resulted in fair and reasonable interconnection between CMRS providers and incumbent LECs. LECs continue to bargain from a position of monopoly power[5] in these negotiations, effectively able to mandate the terms and rates of interconnection; in the vast majority of cases, LECs do not in fact pay mutual compensation to CMRS providers.[6] While LECs may assert that

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3. *See* 47 U.S.C. § 201.

4. *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1497-98 (1994).

5. There can be no serious debate that almost all LECs operate as monopolies in non-competitive local exchange markets, with the exception of some big city markets where competitive access providers serve some business customers. While local loop competition will inevitably appear in the coming years, a remedy for the current market inequities is required today.

6. *See* Declaration of Sandy Kiernan, Vanguard Carrier Relations Manager, at ¶ 6 (dated March 1, 1996), attached hereto as Exhibit A ("Kiernan Dec.").

fixed facilities are set at cost because they are reflected in filed tariffs, their refusal to permit Vanguard to construct its own facilities to connect to LECs raises questions as to the veracity of these claims.

a. LECs Are Able to Dictate the Terms, Conditions and Rates of Interconnection

Vanguard's history and experience with interconnection is typical of that of CMRS providers in general. Vanguard attempts to negotiates the rates, terms and conditions of interconnection with the 95 LECs with which it interconnects,[7] but in the end, the LEC invariably sets the terms and rates of interconnection. Because Vanguard must interconnect with the LEC in order to operate its system, and because there is no real competition in the local exchange marketplace, the only leverage Vanguard has in these negotiations is the threat of litigation, either before a state public utility commission, the FCC, or the courts. Some LECs have countered with threats to cut off interconnection. Mutual compensation is all but ignored; in only one community in one state has a LEC agreed to compensate Vanguard for terminating LEC-originated calls.[8]

Typically, Vanguard signs an interconnection agreement, albeit reluctantly, when the cost of agreeing to the interconnection rate offered by the LEC is lower than the costs of challenging the rate before the state PUC or the FCC, taking into account the delay of the regulatory process and the uncertainty of the result. At times, however, the LEC's

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7. The same LEC sometimes interconnects with Vanguard's cellular systems in different MSAs/RSAs. In total, 40 different carriers interconnect with Vanguard.

8. Nynex, the only LEC that has agreed to pay Vanguard mutual compensation, currently pays Vanguard a reciprocal rate only in Binghamton, New York. Nynex has not extended this arrangement to any other markets.

offered rate is so egregious that Vanguard has chosen to fight the rate charged by the LEC. Vanguard's attempt to set a reasonable rate in Maine is one example.

New England Telephone Company ("NET"), the incumbent LEC in Maine, filed rate schedules in 1988 proposing to charge cellular companies an effective interconnection rate, at certain times of day, of $0.27 per minute. Vanguard and other cellular carriers, through the course of state PUC proceedings and state-mandated negotiations,[9] were able to prevail upon NET to lower this rate to approximately $0.11 per minute by 1991, still high in contrast to NET's marginal interconnection cost of $0.0057 per minute at the peak hour.[10]

Unable to achieve an agreement to lower the rate any further, in May 1993, Vanguard, along with 13 other cellular companies and consumers in the state of Maine, filed a complaint against NET before the Maine PUC. Three months later, the parties reached an agreement, reducing the interconnection rate to $0.067 per minute in September 1993, lowered to $0.06 per minute in September 1994, and to $0.05 per minute in September 1995. The Stipulation does not require NET to compensate the cellular carriers for terminating calls originating with NET.[11] Despite these efforts, which cost Vanguard over $150,000 in

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9. *See Atlantic Cellular Tel. Corp. v. NET*, Docket No. 88-060, Order at 10 (Maine PUC, Dec. 15, 1992) (NET ordered to "immediately enter into good faith negotiations with the cellular parties to this case to establish interconnection charges").

10. This cost was calculated by the cellular companies, based upon evidence of marginal cost presented by NET to the Maine PUC in Docket No. 92-130.

11. *See* Order Approving Stipulation at 6-7, *Atlantic Cellular Tel. Corp. v. New England Tel. Co.*, Docket No. 93-134, (State of Maine PUC, August 31, 1993).

legal fees and other expenses, NET's $0.05 interconnection rate remains in effect, notwithstanding its marginal interconnect cost only one-tenth as high.

Vanguard's negotiations with IXC's -- which are not monopolies -- stand in sharp contrast to its experiences with LECs. Vanguard begins its negotiations for interexchange service by sending a Request for Proposal ("RFP") to several competing IXCs.[12/] The RFP provides a snapshot of Vanguard's facilities so that each IXC has the opportunity to present its package of services that will meet Vanguard's needs.[13/]

Through the negotiation process, Vanguard is able to choose an IXC for interconnection on the basis of price, service and other features.[14/] The competitive market for IXC service allows Vanguard to negotiate a favorable price for interconnection, taking into account volume discounts and other economies of scale. IXCs then file tariffs based upon Vanguard's specific needs and demands.[15/]

Vanguard does not send an RFP to the LECs, as it would serve no purpose. A LEC's account manager offers Vanguard whatever contractual discounts the LEC assertedly provides to other carriers. (Vanguard cannot confirm the accuracy of the discount, however, since it typically cannot see other companies' contracts.) The only discount that a LEC has offered to Vanguard has been based upon term commitments, not on volume of traffic. Vanguard has never been able to negotiate a lower price with a LEC.[16/]

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12. Kiernan Dec. at ¶ 2.

13. *Id.*

14. *Id.* at ¶¶ 2-14.

15. *Id.* at ¶ 7.

16. *Id.* at ¶¶ 2-8.

Negotiations allow the IXC to suggest new ideas and approaches previously not considered by Vanguard. For example, after IXC negotiations Vanguard chose to operate a software-defined long distance platform, which allows Vanguard to use existing trunk lines for new services.[17] Once Vanguard has chosen an IXC, it is able to request a dedicated account team to solve any problems in service or billing, or to suggest new ideas and approaches.[18] The LEC account team is provided at the LEC's discretion, and is not easily changed by Vanguard if problems occur. Another difference between the IXCs and LECs is billing. IXCs provide billing via CD-ROM, which allows Vanguard to analyze traffic; only one LEC has provided CD-ROM billing to Vanguard, and then only for certain services.[19]

The contrast between LECs and IXCs extends to service. Vanguard can negotiate with an IXC concerning the reliability of the IXC network, and can change carriers if one provides unreliable service. With the LECs, however, Vanguard must build redundant systems to provide backup due to poor service by the LEC. In 1995, 95% of telco-related outages experienced by Vanguard were related to LEC problems, not IXC problems. In short, competition in the interexchange marketplace and the resulting negotiating power that Vanguard enjoys with IXCs allows it to reduce overall cost substantially while improving service.[20]

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17. *Id.* at ¶ 3.

18. *Id.* at ¶ 11.

19. *Id.* at ¶¶ 13-14.

20. *Id.* at ¶¶ 9-12.

b. LECs Charge Above-Market Rates

In the vast majority of cases, a LEC's rates for interconnection have little relationship to actual cost, despite the Commission's determination that such rates should be "cost based."[21/] LECs charge Vanguard for interconnection in three components: installation of physical transport facilities; monthly charges for these facilities; and per-minute charges for call termination.

The majority of Vanguard's interconnection cost is in the per-minute termination fees charged by LECs. These fees far outstrip the LECs' cost of termination, as determined by economist Gerald W. Brock.[22/] According to Brock, a LEC's average incremental cost for terminating calls is $0.002 per minute. As Brock discusses in detail, the average incremental cost of interconnection at the peak hour is $0.021 per minute, while the cost at non-peak is zero, resulting in a range of $0.0013 - $0.0025 per minute, and an average of approximately $0.002 per minute.[23/]

Vanguard nevertheless pays LECs termination fees on *all* minutes terminated, whether connected during peak or off-peak. On average, LECs charge Vanguard *nearly fifteen times* Brock's cost estimate.[24/] The Type 2 call termination fees paid by Vanguard range from $0.0259 in New York to $0.05 in Maine. Even the lowest termination fee exceeds Brock's determination of overage cost by more than 1,200%.

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21. *The Need to Promote Competition and Effective Use of Spectrum for Radio Common Carrier Services,* Declaratory Ruling, 2 F.C.C. Rcd. 2910, 2925 (1987).

22. *See* Gerald W. Brock, *Incremental Cost of Local Usage*, at 1-3 (March 16, 1995).

23. *Id.*

LECs also charge Vanguard above-market rates for transport facilities by billing for the entire cost of these facilities even though a substantial amount of traffic on these facilities in fact originates from the LEC, allowing the LEC's subscribers to terminate calls on Vanguard's network. The rate for installation ranges from $900 to $9,000. The monthly charge for these transport facilities ranges from $20 to $30 per voice path (DS0).

In total, interconnection fees have a significant impact on the cost of operating a cellular system. In 1995, Vanguard paid LECs $9,877,247 for transport facilities and per-minute termination charges, an amount representing more than 35% of Vanguard's total, company-wide cost of service for that year.

2. General Pricing Principles

The *Notice* discusses in detail various cost-based pricing principles, a discussion which makes it clear that while a cost-based rate may be, in theory, the most rational pricing principle, it is too costly and expensive to implement, measure, bill and collect. The complexity and length of the discussion itself demonstrates the difficulty in determining cost-based rate levels.[25/] As the Commission notes, there is little agreement on which method is the most accurate to determine the actual cost of call termination without distorting market incentives.[26/] The administrative expense of deciding both which method to use and then applying that method to establish a cost-based rate would be overwhelming.

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25. *See Notice* at ¶¶ 47-55.

26. *Id.*

Moreover, the implementation of cost-based pricing principles is less important where, as here, the incremental cost of termination is so low.[27/]

The Commission should be guided by its own CMRS policies when reaching a pricing principle. First, any equitable pricing principle must recognize the mutual benefits of interconnection, consistent with the Commission's longstanding policy of treating LECs and CMRS providers as co-carriers.[28/] The Commission must be careful not to implement a system that, intentionally or not, enables the LEC to retain an incumbency advantage. For example, the cost of fixed facilities should be allocated on the basis of traffic flow, and should not be apportioned 100% to mobile users merely because CMRS is a new service.

In competitive markets with no entrenched incumbents, such as the Internet, mutual benefits of interconnection are acknowledged.[29/] LEC-CMRS interconnection is no different, as it benefits both carriers by allowing their subscribers to communicate with each other, creating the seamless national communications infrastructure envisioned by the Commission.[30/]

In implementing new rules for LEC - CMRS interconnection, the Commission should recognize that LEC-CMRS interconnection is of mutual benefit. The Commission's tentative decision to apportion the flat rates for transport charges 100% to CMRS incorrectly

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27. *See* Brock, *Interconnection and Mutual Compensation with Partial Competition* at 14-16.

28. *See Cellular Communications Systems,* 86 F.C.C.2d at 496.

29. *See* Brock, *Price Structure Issues in Interconnection Fees* at 1-2 (noting that Internet providers use bill and keep for termination compensation).

30. *See Notice* at ¶ 28.

assumes that the carrier requesting interconnection is the only party to which benefits accrue.[31/] The *Notice* also mischaracterizes CMRS as a "cost-causer" in interconnection.[32/] CMRS is an extension of the public switched network, not a mere customer of the LEC.[33/] Accordingly, the Commission's interconnection pricing principles must enable CMRS to operate as part of this network without any disadvantage based upon its recent entry into the communications market.

Second, cost-based interconnection rates are expensive to administer, an expense that is difficult to justify where, as here, the incremental cost is virtually zero. Setting cost-based rates will inevitably involve protracted administrative proceedings, either at the state or federal level, the expense of which is likely to outstrip any net compensation that either carrier would receive. For example, if the cost to one party of an administrative proceeding were $150,000 (roughly the cost of the Maine proceeding mentioned above), then it would take 75 million minutes of use, at an average termination cost of $0.002 per minute, simply to recoup the cost to one of the parties, not even taking into account the costs to the other carrier and to the regulatory commission.

Because the cost of administrative proceedings is not necessarily dependent on the size of the market or the amount of interconnected traffic, small market CMRS providers and start-up companies with no current revenues would be harmed disproportionately.

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31. *Notice* at ¶ 42.

32. *Id.* at ¶ 63.

33. *See Cellular Communications Systems,* 86 F.C.C.2d at 495-496 (1981). This is most evident in a geographic sense. Prior to cellular, telephone service was available at a limited number of discrete locations via the LEC (e.g., at your desk at work; at your kitchen table at home). Cellular service increased the reach of telephone services to cars, roads and highways, and anywhere pedestrians can go.

Competition in both the CMRS and the local loop markets from these companies would inevitably be delayed and distorted.

Administrative proceedings would be inefficient as well. Because Vanguard interconnects with 95 LECs on a market-by-market basis, it would need to participate in 95 separate proceedings. Even if the proceedings were consolidated on a carrier-by-carrier basis, Vanguard would be involved in 40 separate proceedings. Not only would this raise the costs of interconnection, it would also delay the implementation of the new compensation regime.

3. Pricing Proposals (Interim, Long Term, Symmetrical) -- The Commission Should Implement Bill and Keep

The current market structure, the history of LEC-CMRS negotiations, and the inefficiency of cost-based pricing all point toward bill and keep as the most appropriate compensation regime for immediate implementation. Bill and keep should be an interim measure, but should not be removed until the incumbent LECs have proven to the Commission that the local loop has become a competitive market that will enable CMRS providers to negotiate reasonable interconnection arrangements without regulating intervention.

Bill and keep, as the Commission has proposed it, will eliminate call termination fees between carriers, allowing each carrier to bill its own subscribers for the costs of call termination.[34/] In other words, the interconnecting networks will operate on a system of reciprocal compensation at a rate of zero.[35/]

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34. *Notice* at ¶ 60.

35. *Id.*

As applied to LEC-CMRS interconnection, bill and keep has several key advantages. First, it will place all carriers on an equal footing in setting call termination fees. LECs will collect termination costs (if any) not from CMRS providers, but from their own subscribers.[36/]

Second, the actual incremental cost of call termination makes bill and keep the best approximation of call termination costs short of actual cost determination, which can only be accomplished through burdensome and lengthy administrative proceedings. With the incremental cost of termination at zero during off-peak, and very low on average,[37/] setting compensation at zero is a fair approximation of actual cost.

Third, Bill and keep also encourages efficiency, driving the cost of termination closer to zero. Setting the compensation at a rate of zero will encourage both carriers to lower costs, as each will no longer have the opportunity to force the other to pay for its inefficiency. Indeed, the use of cost-based pricing at all is of questionable utility. Cost-based pricing, with its focus on equating the price to the consumer with the marginal cost of providing the service, creates disincentives for the carriers to provide the service efficiently. For this reason, the trend in pricing is to move to flat pricing policies that allow the carrier to retain the difference between its costs and the price charged, thereby incentivizing the

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36. As noted by the Washington State Utilities and Transportation Commission, the LEC already recovers the cost of most call terminations from its own customer, as a subscriber's monthly charge covers access to and from the public switched network. *Washington Utilities and Trans. Comm. v. US West Communications, Inc.,* Docket Nos. UT-941464, UT-941465, UT-950265, at 35-36.

37. *See* discussion of termination costs, *supra* at 10-12.

carrier to perform efficiently.[38] Charging a flat, zero-based charge, will encourage both the LEC and the CMRS carrier to minimize their actual cost of terminating the other's calls.

Fourth, while administrative proceedings would undoubtedly result in a more precise evaluation of actual termination costs, the time and expense of such a determination would eliminate any of its benefits. These costs would not only be borne by the carriers (only adding expenses to the industry), but would also consume scarce FCC resources which are already committed to dozens of new rulemaking proceedings pursuant to the Telecommunications Act of 1996.

Measuring, billing and collecting termination fees would also be expensive.[39] Vanguard, for example, currently has no system for determining the minutes terminated from a LEC, or vice-versa; the cost of the requisite software development and implementation alone would exceed $200,000. In contrast, bill and keep is simple and inexpensive: it requires no administrative determination of cost and no traffic measurements.

Fifth, bill and keep is an equitable system of compensation. In a competitive market (or a market where neither party can exercise monopoly power), co-carriers will recognize the mutual benefits of low-cost interconnection. In fact, bill and keep is the dominant compensation model among incumbent LECs for terminating extended area service

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38. *Cf., e.g., In the Matter of Price Cap Performance Review for Local Exchange Carriers,* First Report and Order, 10 FCC Rcd 8961, 8973, ¶¶ 27-29 (contrasting inefficiency and reduced profit incentives of cost-based rate-of-return regime with incentive-based efficiency benefits of price cap system).

39. The cost of billing, measuring and collecting data can account for up to 50% of the cost of terminating local calls. *Washington Util.* at 23.

traffic between adjacent exchanges.[40] Adopting the system for LEC-CMRS interconnection will replicate the incentives that exist in a competitive market.

Sixth, bill and keep promotes competition between CMRS providers and LECs, removing barriers to call termination on either end. When combined with mandated interconnection, bill and keep provides an incentive for each carrier to terminate calls on its co-carrier's network without permitting the competitor to eliminate the opportunity of the co-carrier to interconnect.[41]

Seventh, and perhaps most importantly, bill and keep can be implemented immediately. The current system of unilateral fee-setting and one-way compensation imposes unnecessary and unreasonable costs on CMRS providers that will delay or prevent market entry by new services, as well as forestall innovation and competition from existing systems. As Commissioner Chong noted, "interconnection delayed may be interconnection denied."[42] There will be no delay with bill and keep.

Once a system of bill and keep is implemented, it should be retained until the LECs demonstrate to the Commission that the marketplace for the local loop is competitive.[43] Section 271 of the Telecommunications Act of 1996, for instance, includes a checklist of competitive conditions that must be satisfied before Bell Operating Companies may provide in-region interLATA service.[44] The Commission could use these, or similar

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40. *Washington Util.* at 23.

41. *See* Brock, *Interconnection and Mutual Compensation with Partial Competition* at 14.

42. *See Notice,* Separate Statement of Commissioner Rachelle B. Chong at 1.

43. *See Washington Util.* at 29.

44. *See* 47 U.S.C. § 271(c)(2)(B).

standards, to determine that LECs are subject to competition, and that federal regulation of interconnection compensation is no longer required. At that point CMRS providers will be able to negotiate interconnection with several different exchange carriers, allowing negotiation of reasonable, cost-based rates.

The alternative compensation systems discussed in the *Notice* each have serious deficiencies.[45/] Some systems would require high administrative costs, while others would retain the incentives for LECs to exercise monopoly power. Specifically, the following alternatives would result in compensation arrangements inferior to bill and keep:

• *Bill and Keep at Off-Peak Only.* Limiting bill and keep to off-peak traffic only would eliminate many of the benefits of this compensation system. The administrative costs would be too high, as it will be necessary to determine the peak periods for LEC-CMRS traffic and CMRS-LEC traffic, and then to determine the cost of termination during those hours. Measuring, billing and collecting costs would not be substantially reduced by using bill and keep only in off-peak hours. Eventually, traffic equilibrium will render the distinction between peak and off-peak irrelevant.

• *Subset of Access Charges.* The Commission has long drawn a distinction between IXCs and CMRS providers, considering the latter co-carriers to the LECs in the provision of exchange service.[46/] CMRS providers provide end-to-end service to subscribers and exchange traffic with each other and with LECs. Interexchange carriers, on the other hand, are not co-carriers, but are considered users of the local exchange for the

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45. *See Notice* at ¶¶ 66-75.

46. *MTS/WATS Market Structure,* 97 F.C.C.2d 834, 881-883 (1984).

provision of interstate service, and therefore are subject to access charges that allow LECs to recover the costs of originating and terminating these interstate calls.[47]

As a common carrier providing exchange service, CMRS providers have never been subject to these interstate access charges. Instead, CMRS providers are "entitled to interconnection arrangements that 'minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.'"[48] Adopting an interconnection compensation scheme based upon even a subset of access charges ignores the policy bases for the differentiation between IXCs and CMRS, and would add unnecessary costs to the customer, and would deny CMRS its co-carrier status.

● *Existing Interconnection Between LECs and Cellular.* The present system of interconnection, which allows LECs to charge above-cost rates for terminating calls while refusing to pay mutual compensation, has not worked fairly. Even if the Commission were to begin to enforce its mutual compensation rules, there is nothing to suggest that, short of expensive administrative proceedings, a real mutual compensation policy would succeed. The history of the LECs' intransigence is well documented.

a. Dedicated facilities must be billed on a cost basis depending on traffic

In addition to call termination fees, LECs charge CMRS providers for the transport facilities that connect the two networks. In Vanguard's experience, LECs provide the fixed transport facilities from the MTSO or hub cell site to the LEC's tandem or end

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47. *Id.*

48. *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* 59 Rad. Reg. 2d (P & F) 1275, 1284 (1986), *modified on other grounds,* 2 FCC Rcd. 2910 (1987), *clarified,* 4 FCC Rcd. 2369 (1989).

office and charge the CMRS provider both at installation and on a monthly basis. Vanguard has not been permitted to provide these transport facilities itself; it cannot, therefore, lower their cost.[49/] Moreover, a LEC has never offered to assume the cost of the facilities to the extent they allow the LEC's own subscribers to connect to Vanguard's customers.

The *Notice* perpetuates this system. The Commission proposes to require CMRS providers to pay the entire cost of these "dedicated" transport facilities that are necessary for interconnection.[50/] Even if LECs are able to continue to prohibit CMRS providers from constructing their own transport facilities, they should not be allowed to charge above the allocable cost for these facilities. Instead, the costs should be shared between the CMRS provider and the LEC based upon the balance of traffic.

First, either the CMRS provider or the LEC should be allowed to provide the transport facilities for interconnection at any feasible point agreeable to both carriers, as is required for interconnection between competing LECs by Section 251 of the Telecommunications Act of 1996.[51/] Another example is Washington State, where the PUC requires competing LECs to share interconnection costs. Each carrier is responsible for building and maintaining its own facilities up to a mutually-agreeable meet point.[52/]

Second, if one carrier provides the transport facilities for the interconnection, all rates should be set at cost. The rates for LEC-LEC physical transport facilities may be a

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49. Vanguard could, for example, provide a microwave link for its interconnected traffic from the MTSO to the LEC tandem or another demarcation point. In no case has a LEC agreed to allow such an arrangement.

50. *Notice* at ¶ 64.

51. 47 U.S.C. § 251(C)(2)(B).

52. *Washington Util.* at 45-46.

good indicator.[53] Third, these costs should be pro-rated depending on the traffic flow. Installation charges for transport facilities should be set at a rate reflecting the historical traffic patterns or, if the CMRS provider is new, anticipated traffic balance given the history of other CMRS providers already connected to the LEC. Monthly charges should be set annually, allocated based upon the balance of the previous year's traffic.

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

To the extent that negotiated contracts or tariffs are necessary under the Commission's adopted interconnection rules -- and bill and keep does not require either -- Vanguard urges the Commission to adopt a system of "contract tariffs."[54] These tariffs should be filed with the state PUCs and made publicly available.

Public filing of contract tariffs will have at least two benefits. First, other CMRS providers will have an easily accessible source -- the state PUC -- for the rates charged to similarly-situated carriers for fixed transport facilities. This information will lead to uniform, if not lower, rates, which should help to level the playing field among CMRS providers. Second, regulators will retain the power to investigate carriers for charging discriminatory or unreasonable rates pursuant to Section 205 of the Act.[55]

Under the Commission's proposed rules, the rates, terms and conditions for the construction and maintenance of physical transport facilities will continue to be negotiated between LECs and CMRS providers, while the per-minute termination charges will be

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53. *Id.*

54. *See Notice* at ¶¶ 91-95.

55. *Id.* at ¶ 94.

recovered on a bill and keep basis. LECs should be required to file contract tariffs that include the cost of fixed facilities, data showing from which carrier the traffic originated, and a rate based upon this balance in traffic.

2. Jurisdictional Issues

The interconnection policies proposed in the *Notice* will have a significant and immediate impact upon LEC-CMRS interconnection only if the Commission promulgates specific rules that expressly preempt state regulation.[56/] If the Commission adopts only a broad regulatory framework, leaving implementation of these policies to the states, the result will be delayed enforcement and inconsistent application, only adding to the regulatory burden on CMRS providers.

The FCC has both the authority and the duty to preempt state regulation of interconnection compensation. The recently passed Telecommunications Act of 1996 does not affect this obligation. Even if the Commission were not required to preempt state regulation in this area, it should do so because multi-jurisdictional regulation would defeat the federal interconnection policies; CMRS service is increasingly an interstate service that is not segregable into intrastate elements.

First, the Telecommunications Act of 1996 (the "Telecom Act") does not affect the obligation of the Commission to preempt state CMRS rate and entry regulation.[57/] Section 251 of the Telecom Act explicitly states that it does not limit the Commission's authority under Section 201 of the Communications Act.[58/] This rulemaking is grounded in

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56. *Id.* at ¶¶ 107-114.

57. *See* 47 U.S.C. § 332(c).

58. *See* 47 U.S.C. § 251(i); H. Rep. 104-458, 104th Cong., 2d Sess. 123 (1996).